

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD
MERCHANT MARINER'S LICENSE No. 575495 DOCUMENT No. Z-520-54-4625-D4

Issued to: Dennis D. VETTER

DECISION OF THE VICE COMMANDANT ON REQUEST FOR A TEMPORARY
LICENSE

UNITED STATES COAST GUARD

2469

Dennis P. Vetter

This request for issuance of a temporary license has been accepted and reviewed in accordance with 46 U.S.C. §7701 and 46 CFR § 5.707.

By order dated 22 March 1988, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, revoked Appellant's license and document upon finding proved a charge of misconduct. The misconduct charge was supported by four specifications which alleged that Appellant, while serving as Third Assistant Engineer aboard the S/S OVERSEAS CHICAGO on or about 3 February 1988, (1) wrongfully returned from shore leave approximately one half hour prior to his scheduled watch in an intoxicated condition; (2) wrongfully assaulted and battered the Master, Cecil Smith by striking him with his fist and kicking him; (3) wrongfully created a disturbance by using foul and abusive language toward the Master, Cecil Smith; and (4) wrongfully assaulted and battered the Chief Mate, William Miller by kicking him.

On 20 April 1988, Appellant filed a notice of appeal and requested that the Order of the Administrative Law Judge be stayed pending appeal or that a temporary license pending appeal be issued. On 21 April 1988, the Administrative Law Judge denied Appellant's request for a temporary license. On 23 May 1988, Appellant filed a notice of appeal from the denial of his request for a stay in this matter or the issuance of a temporary license. Appellant has not filed a brief in support of his notice of appeal.

FINDINGS OF FACT

Appellant is the holder of a Merchant Mariner's License No. 575495, which was last issued to him on 23 September 1986 at San Francisco Bay, California, and authorizes him to serve as First Assistant Engineer of steam vessels of any horsepower. In addition, Appellant is the holder of a Merchant Mariner's Document No. Z-520-54-4625-D4, which was last issued to him on 3 December

1984 at San Francisco, California, and authorizes him to serve in any unlicensed rating in the Engine Department.

On 3 February 1988 at Long Beach, California, the Appellant was serving on board the SS OVERSEAS CHICAGO, Official Number 583412, a merchant vessel of the United States, in the capacity of Third Assistant Engineer and was serving under the authority of his license and document.

At or about 1130 on 3 February 1988, Appellant returned by launch to the SS OVERSEAS CHICAGO, which was anchored in Long Beach harbor for refueling and delivery of spare parts. At that time, Appellant was in an intoxicated condition. Appellant had been assigned the next upcoming watch from 1200 to 1600 hours.

After an apparent argument with the First Assistant Engineer, the Chief Engineer advised the Master that the Appellant was drunk and wanted to quit the vessel. Following a meeting with the Master and Chief Engineer, the Appellant returned to the Master's office, entered and approached the Master at his desk. The Master asked the Appellant to wait outside. The Appellant shouted an obscenity at the Master, and then struck the Master with his right fist, striking the Master on the left side of his face, knocking his reading glasses from his face. A scuffle ensued between the Master and the Appellant, finally the Master was able to push the Appellant out the door. Together with the Chief Engineer and the Third Mate, the Master handcuffed the Appellant. As Appellant was being taken topside to await the arrival of law enforcement officials, Appellant kicked the Master on the right knee and kicked the Chief Mate on the right leg.

BASES OF APPEAL

Appellant raises the following issues on appeal of the denial of the stay and the request for a temporary license:

(1) Denial of due process in that the case proceeded 2469 against the Appellant in absentia, contrary to Appellant's express desire to be present in violation of the 5th and 14th Amendments to the United States Constitution.

(2) Appellant was denied the opportunity to confront and cross-examine the evidence presented against him in violation of the 5th and 14th Amendments to the United States Constitution.

(3) Appellant was denied the opportunity to present evidence in his own defense in violation of the 5th and 14th Amendments to the United States Constitution.

(4) That the Order rendered was against the weight of the evidence and was excessive, citing 46 CFR §§ 5.63, 5.5 and 5.569.

Appearance: J. Clark Aristei, Esq. FOGEL,
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OPINION

A request for a temporary document is governed by the provisions of 46 CFR § 5.707(c), which provides:

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in [46 CFR] §5.61 (a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant.

The issue to be decided in granting or denying a request for a temporary license is not whether the charges against the Appellant were found proved or whether the actions of the Administrative Law Judge comport with due process. Rather, the issue is whether continued service of the Appellant pending the outcome of his appeal is compatible with the requirements for safety at sea and consistent with applicable laws.

In addition to committing a serious assault and battery upon two of the senior offices of his vessel, Appellant's conduct in this case constitutes interference with the Master and Chief Engineer in the performance of their official duties. At the time of the incident in question, the SS OVERSEAS CHICAGO was at anchor in Long Beach harbor for refueling and the delivery of spare parts. This required the attention of both the Master and the Chief Engineer. Prior to the assault, the Master was engaged in obtaining a relief for the Appellant. This interference with official duties is one of the enumerated offenses in 46 CFR §5.61 (a). Since Appellant has been found to have committed "one of the offenses enumerated in 46 CFR §5.61 (a)", a presumption of incompatibility does arise in this case. The Administrative Law Judge relied on this presumption in denying Appellant's request for a temporary license. Appellant did not file a brief in support of his request for a temporary license either rebutting the presumption or presenting any evidence on the issue of

compatibility. In addition to the presumption, I have reviewed the record with my primary consideration remaining safety at sea. Appeal Decision 2343 (WILLIAMS); Appeal Decision 2405 (LEON); Appeal Decision 2467 (TOMBARI); Commandant v. Amoury, NTSB Order no. EM-94 (1981); Commandant v. Lyons, NTSB Order No. EM-141 (1987).

Upon review of the record I find no facts or arguments that support Appellant's request by way of evidence showing that granting the request is compatible with safety at sea and consistent with applicable laws.

The overwhelming factor supporting the denial of Appellant's request for a temporary license is the violent nature of the attack on the Master and Chief Mate on the SS OVERSEAS CHICAGO. Furthermore, the denial is in keeping with prior decisions on appeal involving assault and battery. See Appeal Decision 1543 (CHAPMAN); Appeal Decision 1892 (SMITH); Appeal Decision 2017 (TROCHE); Appeal Decision 2313 (STAPLES); Appeal Decision 2331 (ELLIOTT). The fact that Appellant's attack, while under the influence of alcohol, was apparently uncontrollable, violent, and unprovoked convinces me that Appellant's potential for future violence resulting in harm to others is great. Appeal Decision 2313 (STAPLES); Appeal Decision 2331 (ELLIOTT).

CONCLUSION

Appellant's potential for violence poses a threat to both officers and crew who could come in contact with him on board ship. Appellant displays no respect for the authority and dignity vested in the Master of a vessel. His decision to seek out, confront, and assault the Master, threatens not only the Master as an individual, but if encountered at sea, threatens the lives of the entire crew and the safety of the vessel. Therefore, continued service is incompatible with the requirements for safety at sea and is inconsistent with applicable laws.

ORDER

The order of the Administrative Law Judge date 21 April 1988 at Long Beach, California, denying the Appellant's request for a stay of the proceedings or the issuance of a temporary license, is AFFIRMED.

Clyde Lusk, Jr
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 2nd of August 1988.